

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE

RACHEL LYNN ANDONA, aka
RACHEL LYNN DURFEE,

Debtor.

)
)
)
)
)
)
)

Case No. 99-03091

SUMMARY ORDER

Lois K. Murphy asks the Court to approve allowance and payment of her administrative fees for serving as Chapter 7 trustee in this Chapter 13 case. The Chapter 13 Trustee John Krommenhoek objects to allowance of the administrative expenses. The Court concludes that Ms. Murphy should be allowed some, but not all, of the fees claimed.

Facts.

On November 24, 1999, Debtor Rachel Andona filed a voluntary Chapter 7 petition. Ms. Murphy was appointed to serve as Chapter 7 Trustee. Creditor Key Bank claimed a security interest in Debtor's 1990 Toyota Forerunner. Ms. Murphy investigated the bank's claim and determined that its lien was potentially avoidable as a preference. When advised of the Chapter 7

Trustee's position, Key Bank agreed to release the security interest so the vehicle could be liquidated for the benefit of unsecured creditors.

Given this development, and so as to retain the vehicle, on March 2, 2000, Debtor filed a motion to convert the case to Chapter 13. John H. Krommenhoek was appointed Chapter 13 Trustee. In her proposed Chapter 13 plan, Debtor will pay the value of the Forerunner to unsecured creditors.

On April 13, 2000, Ms. Murphy filed a motion seeking allowance and payment of \$1,550 in fees as priority administrative expenses under the Chapter 13 plan. The Chapter 13 Trustee objects to the motion.

At a hearing on the motion held on May 9, 2000, the U.S. Trustee, Chapter 13 Trustee, and Debtor's counsel conceded Ms. Murphy should receive some compensation for her work prior to conversion. However, they assert the amount of compensation should not be calculated according to the maximum percentages permitted under Section 326(a) as suggested by Ms. Murphy. See 11 U.S.C. § 326(a). The Court directed Ms. Murphy to submit a supplemental affidavit itemizing the time she spent working on this matter, and suggesting a reasonable hourly rate for compensation under the circumstances. Ms. Murphy filed the affidavit on May 17.

Discussion

The question presented concerns the amount of compensation payable to a Chapter 7 trustee when that trustee discovers an asset available for liquidation for creditors, but where the case is converted to Chapter 13 before the asset is sold and any funds disbursed.

Compensation of Chapter 7 trustees is governed by Sections 326 and 330 of the Bankruptcy Code. See 11 U.S.C. §§ 326, 330. Section 330(a)(1) provides in relevant part:

After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee . . . (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and (B) reimbursement for actual, necessary expenses.

11 U.S.C. § 330(a)(1). Section 326(a) in turn restricts the maximum amount of compensation the Court may approve for a Chapter 7 trustee. It reads:

In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent of the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and

reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

11 U.S.C. § 326(a).

The provisions of Section 330(a)(1) and Section 326(a) operate independently of one another. *In re Financial Corporation of America*, 114 B.R. 221, 223-24 (9th Cir. B.A.P. 1990), *aff'd*, 946 F.2d 689 (9th Cir. 1991). The legislative history to Section 326 reflects that Section 330 “authorizes and fixes the standard of compensation” while the restrictions of Section 326(a) are “to be applied as outer limits” of such compensation. H. Rep. No 95-595, 95th Cong., 1st Sess. (1977) 327, 328.

A strict reading of Section 326(a) would compel the conclusion that a Chapter 7 trustee who does not disburse moneys is not entitled to compensation. The courts, however, have refused to impose such a harsh result, and have awarded trustees compensation on a *quantum meruit* basis when the trustee performs substantial beneficial services in a case, but did not disburse any moneys. *See, e.g., In re Colburn*, 231 B.R. 778 (Bankr. D. Or. 1999); *In re Berry*, 166 B.R. 932 (Bankr. D. Or. 1994); *In re Tweeten Funeral Home, PC*, 78 B.R. 998 (Bankr. D. N.D. 1987); *In re Stabler*, 75 B.R. 135 (Bankr.

M.D. Fla. 1987); *In re Woodworth*, 70 B.R. 361 (Bankr. N.D. N.Y. 1987); *In re Parameswaran*, 64 B.R. 341 (Bankr. S.D. N.Y. 1986); *In re Pray*, 37 B.R. 27 (Bankr. M.D. Fla. 1983); *In re Flying S Land & Cattle Company, Inc.*, 23 B.R. 56 (Bankr. C.D. Cal. 1982); *In re Rennison*, 13 B.R. 951 (Bankr. W.D. Ky. 1981).

This Court agrees that Section 330(a) authorizes compensation in this case, while Section 326(a) fixes the maximum amount of that compensation.

Ms. Murphy requests allowance of \$1,550, which is the maximum compensation permitted under Section 326(a) had she sold the Forerunner and disbursed the proceeds. Her affidavit itemizes 9.52 hours she spent working on the case, and suggests that, if paid on an hourly basis, a reasonable hourly rate for her services should be \$110 per hour, an amount comparable to what bankruptcy attorneys charge in typical Chapter 7 cases. Under this “lodestar” approach, her fees would total \$1,047.20.

The Court must evaluate the Chapter 7 Trustee’s claim in light of the factors enumerated in Section 330(a)(3), which include:

(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task

addressed; and (E) whether the compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3)(A-E).

All things considered, the Court concludes the Chapter 7 Trustee's efforts in this case prior to conversion were both necessary and beneficial to the bankruptcy estate. As a result of Ms. Murphy's diligence and services, an avoidable transfer was identified, which will result in unsecured creditors being paid a substantial sum through Debtor's Chapter 13 plan. The time Ms. Murphy spent performing services in the case, 9.52 hours, is certainly reasonable under the circumstances and will be accepted without concern by the Court.

However, the Court will not approve compensation at the same rate as that commanded by an experienced bankruptcy attorney. Ms. Murphy is not an attorney, but is a lay trustee. She should receive compensation comparable to that received by trustees, not lawyers. There is little in the record to establish what an appropriate hourly rate should be under these facts. In the absence of other proof, based upon this Court's experiences, a rate of \$75 per hour should fairly compensate Ms. Murphy. Therefore, compensation will be approved in the sum of \$714.00. Ms. Murphy will also be allowed reimbursement of her costs which total \$24.38.

Conclusion and Order

The Chapter 7 Trustee's motion to approve administrative fees (Docket No. 21) will be granted and an administrative expense claim for Ms. Murphy's services and costs in this case will be approved in the total sum of \$738.38.

IT IS SO ORDERED.

DATED This _____ day of June, 2000.

JIM D. PAPPAS
CHIEF U.S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

Office of the U.S. Trustee
P. O. Box 110
Boise, Idaho 83701

Lois Murphy
2404 Bank Drive #312
Boise, Idaho 83705

Jed Manwaring, Esq.
P. O. Box 959
Boise, Idaho 83701

Jake Peterson, Esq.
1215 W. Hays
Boise, Idaho 83702

John Krommenhoek
P. O. Box 8358
Boise, Idaho 83707

CASE NO.:

CAMERON S. BURKE, CLERK
U.S. BANKRUPTCY COURT

DATED:

By _____
Deputy Clerk

